

**WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND  
OPPORTUNITIES OF LIBERALIZATION**

**Montreal, 24 to 29 March 2003**

**Agenda Item 2: Examination of key regulatory issues in liberalization  
2.2: Market access**

**LIBERALIZATION OF MARKET ACCESS**

(Presented by the International Transport Workers' Federation (ITF))

**SUMMARY**

This working paper argues that States should actively manage their traffic rights, and cautions against laissez-faire liberalization of these rights at a time when the industry needs stability and certainty to recover from the deepest economic crisis in its history. In this paper the ITF responds to the Secretariat's proposals in ATConf/5-WP/8 by drawing attention to additional factors which impact on market access and are likely to distort the supposed beneficial effects of liberalization of traffic rights, often to the detriment of stakeholders. The ITF concurs with ATConf/5-WP/8 in rejecting any further extension of the role of the World Trade Organization in this sector. The ITF supports the approach of the ICAO Secretariat in its recommendation that changes in traffic rights should evolve through sovereign agreements at the bilateral, multilateral or regional levels, but emphasises that these should be based on reciprocity, a balance of benefit, the protection of the public interest dimension and active policies to promote the participation of all States in the provision of air transport services. The paper makes recommendation to this effect.

Action by the Conference is in paragraph 3.1.

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<sup>1</sup> French and Spanish versions provided by the International Transport Workers' Federation (ITF).

## 1. DISCUSSION

1.1 The granting or otherwise of air traffic rights is a fundamental tool by which States are able to exercise sovereignty over their aviation infrastructure. The ITF believes that States have a responsibility to defend and balance the interests of all stakeholders in air services including passengers, shippers, aviation employees, and dependant industries and communities, as well as shareholders. We believe that this means that States should have a policy of active management of the exercise of air traffic rights and market access and strongly urge States that this should be based on country and route specific decisions taken on a case-by-case basis.

1.2 The strong claims that have been made for the economically benevolent and beneficial effects of the liberalization of traffic rights have often not been borne out in practice. Liberalized air service agreements, whether in the form of bilateral or multilateral “open skies” accords or as components of regionally integrated economic markets, have often failed in one or both of two ways.

1.3 Such agreements have either not achieved their ambitions due to other market access constraints, or - even more seriously - have opened the door to anti-competitive practices and undermined the ability of States to exercise control over the behaviour of carriers that are designated to exercise such liberalized rights.

1.4 One almost universal feature of the liberalization of traffic rights, whether domestically or internationally has been the often widespread and damaging instability that has resulted in the short, medium or long term for established providers. An unprecedented number of company bankruptcies immediately followed domestic deregulation in the United States in 1978 and have since recurred systematically. We believe that the Australia-New Zealand Common aviation Area of 1992 has been a major contributor to the deep instability of trans-Tasman and domestic air services in those countries that continue today. Independent evaluation of the three packages of liberalization that led to the creation of the European Single Aviation Market of 1997 suggests that the claimed benefits have at best been patchy and that in some instances the results have been regressive.

1.5 Some would argue that this is an inevitable consequence of the exposure of air carriers to greater competition and advocates of market discipline emphasise that this is the only route to long-term air carrier health. Two decades on from the first wave of liberalization, as air carriers confront the greatest losses ever experienced, such arguments stretch credulity.

1.6 Aviation workers as well as passengers and others dependent upon aviation services, such as shippers, the tourism industry, and remote communities want reliability, stability and certainty. A low-risk (or, at least, a predictable risk) environment is also crucial to restoring the investor confidence and access to capital that carriers need to return to financial stability at a time when external factors continue to present major challenges to their operations. The ITF therefore urges States to exercise extreme caution when considering future “open skies” agreements and strongly endorses the conclusion of paragraph 4.1 e) of ATConf/5-WP/8 that States should pursue liberalization “at their own choice and own pace”.

1.7 The claim that liberalization would bring additional choice or lower prices to consumers is plainly contradicted by the evidence. Domestic deregulation of traffic rights has led to a growth in monopoly concentration in many States where it has been applied. Some advocates of integrated “open skies” regional markets are explicit that liberalization of traffic rights is designed to stimulate airline consolidation. This is one element of the European Commission’s rationale in favour of the proposed Transatlantic Common Aviation Area.

1.8 Until now, the national ownership and control criterion for designation has constrained a parallel process of concentration amongst international carriers operating under traditional air service agreements, and in turn has acted as a brake on consolidation within some integrated markets (such as the European Union) amongst carriers dependent on international operations, irrespective of whether these carriers operate with liberalized air traffic rights. The ITF's Working Paper on this subject addresses these issues in greater detail.

1.9 A combination of liberalized market access rights and abandonment of strict nationality criteria are likely to pave the way for a period of strong industrial and corporate reorganization at the very time that carriers, their users and their employees need stability, reliability and predictability to regain passenger and investor confidence.

1.10 "Open skies" agreements may still contain an element of reciprocity, but they have not necessarily been able to prevent the abuse of dominant market position of some carriers operating under such agreements. When one operator of international services in a Central America country with an "open skies" agreement with the United States of America complained that the dominant United States carrier designated under the agreement was dumping capacity, it discovered that there were no provisions within the agreement to address such anti-competitive practices. The ITF believes that clauses to address anti-competitive practices should constitute an essential component of such agreements if the national interest and public service dimension of air operations are to be protected. An analysis carried out by one of our affiliate unions of airfares on routes between Latin American countries and the United States pre- and post- traffic rights liberalization pointed to an increase in ticket prices in cents per kilometre following the signing of "open skies" agreements, further suggesting that measures to control anti-competitive practices must be integral to such agreements.

1.11 Of course, liberalization of traffic rights between States does not necessarily result in liberalization of market access, as ATConf/5-WP/8 rightly emphasizes. There are many additional constraints at play. Airport capacity limitations, and growing public sensitivity about noise and environmental impact, mean that States will continue to have in place mechanisms to limit or regulate market access in many cases. Public sector air traffic control services have responded magnificently to demands placed on them arising from traffic growth over recent decades, but barriers still exist, especially in crowded airspace and at congested airports and where there has been insufficient investment in personnel. In the most developed nations, air transport is a largely mature industry in which new entrants face major obstacles to competing with established carriers. All of these factors mean that the ambitions of liberalizers are often not fully realized. We concur with the assessment contained in paragraph 3.8 of ATConf/5-WP/8 that difficulties in increasing airport capacity will "continue to challenge and possibly limit the liberalization of international air services", however, we do not believe that such limitations are necessarily negative where they operate to address broader public interest considerations. An Organisation for Economic Co-operation and Development (OECD) Economic Study (No 32 of 2001) analyzed the contribution of regulation, government control and market structure on airfares in 100 selected routes and concluded the ticket costs were influenced by widely differing factors in each case, further reinforcing the proposition in ATConf/5-WP/8 that States should consider liberalization on a case-by-case basis bearing in mind the constraints and circumstances applying in each instance.

1.12 Given the diversity of factors affecting market access rights in international air transport referred to above, we are not surprised that there is no global consensus amongst States on the incorporation of air transport services within the World Trade Organization's (WT) scope. As ATConf/5-WP/8 concludes in paragraph 4.1 c): "applying the basic GATS principle of most favoured nation (MFN) treatment to traffic rights remains a complex and difficult issue".

1.13 The ITF's key concern with regard to the WTO relates to the impact of breaking the link between economic regulatory and safety and security regulatory functions that such a transfer of responsibility would represent. However, we are also aware that even with regard to the three areas of aviation economic activity already included in the scope of the General Agreement on Trade in Services (GATS) by virtue of the Annex on Air Transport Services, there has been little enthusiasm by States for the application of the MFN approach. So far, between 30 and 35 countries alone have registered under GATS procedures for aircraft repair and maintenance, fewer than 40 have committed themselves to selling and marketing, and only 5 to computer reservation system services. This suggests that the WTO framework does not represent a particularly effective route to further liberalization, even of so-called "soft rights". It should also be noted that currently ICAO, with 187 member States provides a more globally representative intergovernmental forum for aviation than the WTO with its 140 Contracting States. For the reasons outlined in ATConf/5-WP/8 and in view of these additional factors, we urge States to reject any extension of the role of the GATS in the field of aviation.

1.14 States will also be aware that potentially serious problems arise in regard to the maintenance of national safety and security standards where liberalized air service agreements are concluded. Where it cannot be guaranteed that designated airlines under such an agreement shall operate under equivalent safety standards, the potential arises for lower regulation to act as unfair competitive advantage for some carriers in the market. This is one of the reasons why the ITF strongly endorses the objections of the International Federation of Air Line Pilots' Associations (IFALPA) regarding Seventh Freedom rights and cabotage. It is also why the ITF believes that there needs to be an organic link - though ICAO - between safety and economic regulation.

## 2. CONCLUSIONS

2.1 States are recommended to have a policy of active management of the exercise of air traffic rights and market access based on country and route specific decisions taken on a case-by-case basis.

2.2 States should pursue liberalization at their own choice and own pace.

2.3 Any extension of "open skies" agreements or other means of market access liberalization need to be accompanied by effective measures to prevent anti-competitive behaviour.

2.4 In determining their policies on air traffic rights, States should have due regard for reciprocity, a balance of benefit, and the protection of the public interest dimension.

2.5 There should be no further extension of the GATS in the air transport services sector.

## 3. ACTION BY THE CONFERENCE

3.1 The Conference is invited to:

- a) note the contents of this working paper; and
- b) adopt the conclusions contained in paragraph 15 above.